UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: Joyce A. Ditello	)	CASE NO.: 13-52307
	)	CHAPTER 13
	)	
	)	JUDGE CHARLES M. CALDWELL
Debtor	)	
	)	

OBJECTION OF AMERICAN TAX FUNDING, LLC TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN DOCKET #5

Now comes Creditor, American Tax Funding, LLC ("ATFS"), by and through counsel, and hereby objects to confirmation of Debtor's Plan of Reorganization.

The Debtor's Chapter 13 Plan of Reorganization, as proposed, fails to provide for the pre-petition property taxes of $24,015.72 and interest rate of 18%, as secured, as set forth by the Proof of Claim #7 filed by ATFS. Debtor's Plan attempts to cram down ATFS by failing to include ATF in the distribution of the plan.

A. The Debt of ATFS is governed by Ohio Revised Code §§5721.30 to 5721.43.

When real estate taxes are not paid by a property owner, a tax lien attaches to the subject property annually on the first of every January, including interest, penalties, and other fees accrued until paid. *O.R.C. §323.11*. Counties in the State of Ohio, have chosen to avail themselves of Ohio Revised Code §5721 in order to create much needed revenue from unpaid property taxes. While the County Treasurer has the power to enforce tax liens relating to delinquent real estate, this power can be transferred via a tax certificate sale as authorized by the Ohio Revised Code.

Debtor allowed the taxes on the property located at 1940 Little Ave. Columbus, Ohio 43223 to become delinquent. As such, the County Treasurer held a tax certificate sale and ATFS purchased the delinquent tax certificates pursuant to statute, and recorded the same with the Franklin County Recorder.[1] Upon purchase and delivery, ATFS steps into the shoes of the County Treasurer for purposes of the tax liens.

Ohio Revised Code §5721.35 states:

> (A) **Upon the sale and delivery of a tax certificate, the tax certificate vests in the certificate holder the first lien previously held by the state** and its taxing districts under section 5721.10 of the Revised Code for the amount of taxes, assessments, interest, and penalty charged against a certificate parcel, superior to all other liens and encumbrances upon the parcel described in the tax certificate, in the amount of the certificate redemption price, except liens for delinquent taxes that attached to the certificate parcel prior to the attachment of the lien being conveyed by the sale of such tax certificate. With respect to the priority as among such first liens of the state and its taxing districts for different years, the priority shall be determined by the date such first liens of the state and its taxing districts attached pursuant to section 323.11 of the Revised Code, with first priority to the earliest attached lien and each immediately subsequent priority based upon the next earliest attached lien.

(Emphasis added)

As a component of the tax certificate sale, there is a statutory rate of interest, as provided in Ohio Revised Code § 5721.38(B):

> (B) At any time after payment to the county treasurer by the certificate holder to initiate foreclosure proceedings under section 5721.37 of the Revised Code … the owner of record of the certificate parcel or any other person entitled to redeem that parcel may redeem the parcel by paying to the county treasurer the sum of the following amounts:
>
> …**(2) Interest on the certificate purchase price for each tax certificate sold respecting the parcel at the rate of eighteen per cent per year for the period beginning on the day on which the payment was submitted by the certificate holder and ending on the day the parcel is redeemed under this division;**
>
> …(4) Reasonable attorney's fees in accordance with section 5721.371 [5721.37.1] of the Revised Code if the certificate holder retained a private attorney to foreclose the lien;
>
> (5) Any other costs and fees of the proceeding allocable to the certificate parcel as determined by the court or board of revision.
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> (Emphasis Added).

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[1] Copies of said Tax Certificates are attached to the Proof of Claim, filed by ATFS, on April 23, 2013, and will not be attached to this Response.

ATFS, pursuant to Ohio Revised Code §§ 5721.35, 5721.38(B), has properly included in its Proof of Claim the amount due and owing of $24,015.72 and with an interest rate of 18%, on the principal balance, plus accrued interest and fees and costs. (see proof of claim #7 worksheet)

B. 11 U.S.C. § 511 Establishes That the Rate of Interest Payable on Tax Claims is Determined by State Law.

In 2005, under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), Congress included a provision for Interest on Tax Claims as an exception (and in response) to the "prime-plus-risk" factor approach in *Till v. SCS Credit Corp.* 514 U.S. 465.

11 U.S.C. § 511(a) provides:

> (a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, **the rate of interest shall be the rate determined under applicable non-bankruptcy law.**

(Emphasis Added).

The claim of ATFS is considered a Tax Claim. Ohio Revised Code § 5721.32(E), states in pertinent part, "Upon issuing a tax certificate, the delinquent taxes that make up the certificate purchase price are transferred, and the superior lien of the state and its taxing districts for those delinquent taxes is conveyed intact to the certificate holder." The case law on this issue is equally clear in the Southern District of Ohio. See, *In re Cortner,* 400 B.R. 608 (Bankr. S.D. 2009). In *Cortner*, Judge Humphrey was faced with an issue precisely analogous to the present case; whether the post petition rate of interest on a tax certificate is governed by the Ohio Revised Code, or the prime-plus-risk factor in *Till.* The Court held that the tax certificate claim is a tax claim for purposes of 11 U.S.C. §511 and its corresponding interest rate is governed by applicable State law. "At present, there is no such concern because §511 plainly directs the bankruptcy courts to defer to state law to establish the interest rate on a tax claim…". *Id.*

11 U.S.C. §511 nor O.R.C. §5721.32 make any exceptions for tax claims held by non-governmental entities. However, ATFS contends that for purposes of O.R.C. §5721.32, it operates as a pseudo-governmental entity, as it steps in the shoes of the underlying tax authority. Additionally, the powers and rights of the subject tax authority are assigned to ATFS pursuant to Ohio Law. Simply stated, this Court must apply State law to the treatment of Tax Claims.

WHEREFORE, Creditor American Tax Funding, LLC prays that Debtor's Chapter 13 Plan of Reorganization be denied until the correct arrearage figures and interest rate are added into the plan. The Ohio Revised Code, which must be used by the Court under §511, establishes that ATFS is entitled to receive interest on the tax certificate purchase price in the amount of 18% per annum.

/s/ Scott W. Paris ___________
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CERTIFICATE OF SERVICE

I Scott W. Paris hereby certify that the foregoing response was sent by regular U.S. Mail, postage prepaid, and via the Court's CM/ECF system this 26th day of April 2013 to the following:

Joyce Ann Ditello
1940 Little Avenue
Columbus, OH 43223

Franklin County Treasurer
373 South High Street, 17th Floor
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Court's Electric Mail Notice List:

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/s/ Scott W. Paris ___________
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